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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,782	03/04/2004	Elka Touitou	P-6507-US	4398

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EITAN, PEARL, LATZER & COHEN ZEDEK LLP
10 ROCKEFELLER PLAZA, SUITE 1001
NEW YORK, NY 10020

EXAMINER

ROGERS, JUNE MARIE

ART UNIT	PAPER NUMBER
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1609

MAIL DATE	DELIVERY MODE
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08/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/791,782	Applicant(s) TOUITOU, ELKA	
	Examiner Juné M. Rogers	Art Unit 1609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, 25 drawn to methods for treating burns, classified in class 514, subclass 724.
- II. Claims 17-24, 26-30, drawn to delivery system methods for compounds for burn treatment, classified in class 424, subclass 78.06.
- III. Claims 31-33, drawn to methods for inhibiting rejection of skin implants, classified in class 602, subclass 42.
- IV. Claims 34-36, drawn to methods of reducing the level of cytokine, interleukin, tumor necrosis factor, IL1 or IL6 in an inflicted or pre-inflicted skin area, classified in class 424, subclass 78.05.

Inventions II and I are directed to related inventions. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the methods of Group I and Group II have a materially different design; Group I being directed to treating burns, Group II being directed to the delivery systems for compounds to treat burns. The inventions of Group II and I therefore have a

different mode of operation, function and effect as well as being classified in different classes and subclasses.

Inventions I and III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions of Group I and Group IV are not capable of use with the Invention of Group III because the inventions of Group III require a skin implant surgical procedure. Furthermore, The invention of Group I is directed at treating burns, Group III is directed to inhibiting skin rejections and Group IV is directed to pre-treatment of unburned areas. Additionally, the inventions of are classified in a different classes and subclasses.

Inventions II, III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions of Group II and Group IV are not capable of use with the Invention of Group III because the inventions of Group III require a skin implant surgical procedure. Furthermore, The invention of Group II is directed a delivery systems for compounds to treat burns, Group III is directed to inhibiting skin rejections and Group IV is directed to pre-treatment of unburned areas. Additionally, the inventions of are classified in a different classes (Groups III and IV) and subclasses.

Specie Election

Claims 4, 5, 9,10, 18 are generic to the following disclosed patentably distinct species: polymers. The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other based on the current record.

Claims 19-23 are generic to the following disclosed patentably distinct species: additives. The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Specifically, if applicant elects Group I, Applicant is required to choose (1) no polymer or (2) define a particular species of polymer. If applicant elects Group II, Applicant is required to define a particular species of polymer and choose (1) no additives or (2) define a particular combination of disclosed additives (i.e. plantago and tetracycline) enumerated in claims 19-23. An election of a generic combination such as (plant extract and antibiotic) will be considered non-responsive.

Applicant is cautioned that the election of specific species that is not disclosed, as filed, may be considered new matter.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Conclusion


Due to the complicated nature of the restriction, the restriction requirement is being made via written correspondence in lieu of a telephone interview.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juné M. Rogers whose telephone number is 571-270-3497. The examiner can normally be reached on M-T 8:00-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1609

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 8/2/07
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER
